

09/16/2003 JBR00K51 00000036 78165640

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RE: U.S. Trademark Application Serial No. 78/165,640
Published in the Official Gazette on April 15, 2003

WATERFORD WEDGWOOD PLC)

Opposer)

-v-)

MERVYN'S BRANDS, INC.)

Applicant)

Attorney Docket No. 030775-222)

Opposition No. _____

NOTICE OF OPPOSITION

Assistant Commissioner for Trademarks
BOX TTAB
2900 Crystal Drive
Arlington, Virginia 22202-3513

Commissioner:

In the matter of Application Serial No. 78/165,640, filed on September 19, 2002 by Mervyn's Brands, Inc. ("Applicant"), to register the mark **VINTAGE LUXE** for candles in International Class 4; clocks in International Class 14; fitted furniture covers, chair cushions, pillows, mirrors and picture frames in International Class 20; dinnerware, namely, plates, cups, bowls, and teapots, bath accessories, namely, wastebaskets, toothbrush holders, soap dishes, tissue holders, candle holders not of precious metals, in International Class 21; window draperies, window valances, blanket throws, sheets, comforters, shams, pillowcases, dust ruffles, bath towels, table linen, placemats, unfitted furniture covers, and shower curtains, in International Class 24; and rugs, in International Class 27 (collectively, "Applicant's Goods"), which was published in the Official Gazette on April 15, 2003, Waterford Wedgwood PLC ("Opposer") believes it will be damaged by the registration of Applicant's **VINTAGE LUXE** mark and opposes same. The grounds for this opposition are as follows:

0075 472 000711115

1. Applicant has a business address of 1000 Nicollet Mall, TPS-3165, Minneapolis, Minnesota 55403.

2. Applicant filed Application Serial No. 78/165,640 for the mark VINTAGE LUXE for Applicant's Goods based upon Applicant's intent to use the mark in commerce.

2. Upon information and belief, Applicant had not used the VINTAGE LUXE mark for Applicant's Goods prior to September 19, 2002, the priority filing date alleged in Application Serial No. 78/165,640.

3. Applicant's filing of Application Serial No. 78/165,640 for VINTAGE LUXE is without license, authorization or permission from Opposer.

4. Opposer is the owner of U.S. Trademark Application Serial No. 76/399,145, for the mark VINTAGE for use in connection with articles of glassware in International Class 21 ("Opposer's Goods").

5. Commencing long prior to the filing date of Application Serial No. 78/165,640, Opposer has used, and is now using Opposer's VINTAGE mark in connection with articles of glassware in interstate commerce in the United States..

6. Consumers have come to know and recognize Opposer's VINTAGE mark and associate Opposer's VINTAGE mark with Opposer and Opposer's Goods.

**FIRST GROUND FOR OPPOSITION
(LIKELIHOOD OF CONFUSION)**

7. Opposer realleges the allegations contained in paragraphs 1 through 6 of this Notice of Opposition.

8. Applicant's VINTAGE LUXE mark so resembles Opposer's VINTAGE Mark as to be likely, when applied to the goods of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

9. Applicant's filing date of September 19, 2002 is subsequent to the date of Opposer's first use of its VINTAGE mark.

10. Upon information and belief, Opposer's and Applicant's Goods will be sold in close proximity and purchased and consumed by the same general class of purchasers.

11. Upon information and belief, consumers are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's Goods to be sold under Applicant's VINTAGE LUXE mark and misled into believing that such goods are produced by, emanate from, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

12. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the VINTAGE LUXE mark as set forth in Application Serial No. 78/165,640, in that the mark is substantially similar to Opposer's VINTAGE mark, and that the VINTAGE LUXE mark will be used in connection with goods identical and/or similar to Opposer's Goods.

13. Applicant's registration of the VINTAGE LUXE mark would be contrary to 15 U.S.C. § 1052(d) and would violate and diminish the prior and superior rights of Opposer in Opposer's VINTAGE marks.

WHEREFORE, Opposer prays that its Opposition be sustained, that Application Serial No. 78/165,640 be rejected and that the registration of VINTAGE LUXE as a trademark to Applicant be refused, and for such other relief as may be deemed just and proper.

WATERFORD WEDGWOOD PLC

9/12/03



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September 12, 2003

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Honorable Commissioner for Trademarks
2900 Crystal Drive
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Re: Waterford Wedgwood PLC v. Mervyn's Brands, Inc.
U.S. Trademark Application No. 78/165,640
Mark: **VINTAGE LUXE**
Our Ref.: 030775-222


09-12-2003
U.S. Patent & TMO/TM Mail Rpt Dt. #22

Commissioner:

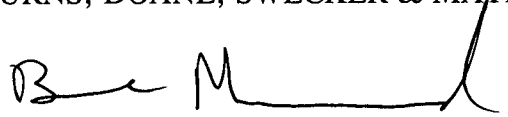
Attached hereto with respect to the above-identified application is a Notice of Opposition, in duplicate.

Also attached is a check in the amount of \$1,800.00 covering the government fees. Any deficiency in the fee should be charged to our Deposit Account No. 02-4800. A duplicate copy of this letter is enclosed.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, LLP

By:


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Bryce J. Maynard.
Attorneys for Opposer

Enclosures